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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,483	07/03/2003	Alan Edward Palmer	F7713(V)	5958
201 7590 01/19/2007 UNILEVER INTELLECTUAL PROPERTY GROUP 700 SYLVAN AVENUE, BLDG C2 SOUTH ENGLEWOOD CLIFFS, NJ 07632-3100			EXAMINER MCCORMICK EWOLDT, SUSAN BETH	
			ART UNIT	PAPER NUMBER
			1661	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/19/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/613,483	Applicant(s) PALMER ET AL.	
	Examiner S. B. McCormick-Ewoldt	Art Unit 1661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>11-6-06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The amendment of November 3, 2006 is hereby acknowledged and entered.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims Pending

Applicant has added claim 18. Claims 1-18 are pending. Claims 1-18 are examined.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-18 remain/are rejected under 35 U.S.C. 103(a) as being unpatentable over Maxwell *et al.* (US 6,063,432) in view of Cook *et al.* (US 4,451,488) further in view Heidlas *et al.* (US 6,288,130) for reasons set forth in the previous Office action which are restated below.

Applicant's arguments filed November 3, 2006 have been fully considered but they are not persuasive.

Maxwell *et al.* discloses a health bar comprising soy protein with at least 25% wt. in the form of solids (column 2, lines 43-53) which supplying the major source of protein to the healthy bar, using a reducing sugar i.e. listed as mannitol that may be substituted (column 2, lines 65-67). In addition, Maxwell *et al.* includes minerals such as zinc, copper, manganese, chromium and iron (column 3, lines 14-15). As disclosed in the specification, encapsulated minerals refers to edible waxes, proteins (whey protein, vegetable proteins from soy i.e. isolated soy proteins), fibres and carbohydrates (sugar alcohols starches) (see page 12-13) which are inherent to the ingredients that Maxwell *et al.* disclose.

Maxwell *et al.* does not disclose wherein the soy protein being in nugget form or wherein the use of glycerol as a humectant or wherein the A_w is of 0.45 or less.

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Cook *et al.* discloses the use of glycerol (which acts a humectant) in a food bar, within the 3% range wt. and A_w between .2 to about 0.55 (see abstract, column 2 lines 40-42 and claims 1, 3 and 6).

Heidlas *et al.* (US 6,288,130) discloses that glycerol is a polyol of diols and triols and that glycerol can be used safely in food (column 3, lines 46-51).

One of ordinary skill in the art would have been motivated to combine soy protein, glycerol and transition metals into a nutrition bar because the combination of these ingredients into a nutrition bar would have assured a suitable 'packaging' or delivery of the product. It was clear from the Maxwell reference a health bar comprising soy protein solids, a reducing sugar (i.e. mannitol used a humectant) and minerals such as zinc, copper, manganese, chromium and iron. It was further clear from the Cooke reference that glycerol can be used in a food bar and the A_w being between .2 to about 0.55. It was further clear from the Heidlas reference that glycerol is a diol and triol polyol and can be used in food. Although none of the references disclose that soy protein in the form of a nugget, Maxwell discloses that the soy protein would be in a solid form. Therefore, one of ordinary skill in the art would have had a reasonable expectation to use soy protein in a solid form because of ease of handling, to use a humectant, preferably glycerol and transition metals to be combined in a nutrition bar which would have assured a suitable suitable 'packaging' or delivery of the product.

These references show that it was well known in the art at the time of the invention to use the soy protein, glycerol and transition metals in nutrition bars. It is well known that it is *prima facie* obvious to combine two or more ingredients each of which is taught by the prior art to be useful for the same purpose in order to form a third composition which is useful for the same purpose. The idea for combining them flows logically from their having been used individually in the prior art. *In re Pinten*, 459 F.2d 1053, 173 USPQ 801 (CCPA 1972); *In re Susi*, 58 CCPA 1074, 1079-80; 440 F.2d 442, 445; 169 USPQ 423, 426 (1971); *In re Crockett*, 47 CCPA 1018, 1020-21; 279 F.2d 274, 276-277; 126 USPQ 186, 188 (1960).

Based on the disclosure by these references that soy protein, glycerol and transition metals are used in nutrition bars, an artisan of ordinary skill would have a reasonable expectation that a combination of the substances would also be useful in creating nutrition bars. Therefore, the artisan would have been motivated to combine the claimed ingredients into a single

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composition. No patentable invention resides in combining old ingredients of known properties where the results obtained thereby are no more than the additive effect of the ingredients. See *In re Sussman*, 1943 C.D. 518; *In re Huellmantel* 139 USPQ 496; *In re Crockett* 126 USPQ 186.

Variations of components in nutritional compositions are well known in the art. It would have been obvious to one of ordinary skill in the art at the time Applicants' invention was made to determine all operable and optimal concentrations of components because concentration is an art-recognized result-effective variable, which would have been routinely determined and optimized in the food industry art. Further, one of ordinary skill in the art would have been motivated to have modified the proportions of active ingredients in the composition in order to enable the content of the preparation to be matched with demands and needs of the food industry. Such variations in amounts of nutritionally active ingredients are considered merely optimization of result effective variables, conventional practice in the art of food industry.

From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references.

Applicant's arguments concerning the above art rejection have been fully considered but are not deemed to be persuasive.

Applicant argues that there was no apparent incentive for a skilled person to combine the teachings of Maxwell and Cook because the fact that Cook teaches food bars containing glycerol and having a water activity of 0.2-0.55 in itself does not provide an incentive to modify the health bars according to Maxwell by reducing the water activity and including glycerol. In response to Applicant's argument that there is no suggestion to combine the references, the Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, one of ordinary skill in the art would be motivated to combine the teachings of Maxwell and Cook because Cook discloses that a low water activity (under 0.90) indicates

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that existence of an environment in which most bacteria will not generally grow. Cook also discloses the water activity the optimum level in the range of 0.2-0.55 while improving the taste and texture of the mixture (see col. 1, lines 52-56; col. 2, lines 51-53) and improving shelf life of the product (see col. 1, lines 11-12). Therefore, one would be motivated to combine the teachings of Maxwell, as discussed *supra*, and Cook because the obvious benefits from the soybean protein, humectants, transitional minerals, and having water activity 0.45 or less and to combine the ingredients into a nutritional bar for ease of convenience and administration of the product.

Applicant argues that none of the cited references makes any reference to protein nuggets. This is not found persuasive because Maxwell does disclose the soy will be in various forms such as grits or in the form of a solid (see col. 2, lines 43-52). One of ordinary skill in the art would be motivated to modify the soy in the form of nuggets because soy nugget technologies have been found to positively affect shelf-life and to deliver different flavor and textural properties in bars and give consumers a wider range of eating experiences.

Therefore, the rejection is deemed proper and is maintained.

Summary

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Correspondence

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Susan B. McCormick-Ewoldt whose telephone number is (571)

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272-0981. The Examiner can normally be reached Monday through Thursday from 6:00 a.m. to 4:30 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiners' supervisor, Anne Marie Grunberg, can be reached at (571) 272-0975. The official fax number for the group is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

sbme



CHRISTOPHER R. TATE
PRIMARY EXAMINER